IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 2895 OF 2005

Indian Bank ...Petitioner

Versus

The M.C.G.B. & Anr ...Respondents

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Mrs. Mohana Nair, counsel for Petitioner

Mr. A.J. Bhor, counsel for Respondents 1 & 2.

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CORAM: B. H. MARLAPALLE, J.

DATED: 5TH MAY, 2005

P. C.:-

1. Heard Mrs. Nair, the learned counsel for the petitioner and Mr. Bhor, the learned counsel for respondent Nos. 1 and 2.

2. Rule. Respondent waives service. By consent of the parties, the petition is heard finally.

3. The petitioner is a Nationalised Bank having its Head Office at 31, Rajaji Salai, Chennai 600 001 and branch office at 276, Lawrence & Mayo House, D.N. Road, Mumbai 400 001 i.e. within the territorial limit of respondent No.1 Corporation. In or about May, 1993 the petitioner has taken on lease the premises bearing No. 1-A on the first and Mazennine

floors on the building known as Lawerence & Mayo House, (formerly known as "Majithia Chambers"), situated at 276, Dr. D.N. Road, Fort, Mumbai 400 001, under three different lease deeds. Under the provisions of the said lease deeds all the municipal taxes are required to be borne by the petitioner in full in respect of the leased premises. The aggregate lease rent payable for the said premises under the said lease deeds was Rs.1,00,812/- per month. On or about 25.6.1999 the lease deeds were renewed and the rent was fixed at Rs.3,70,000/- per month in the aggregate. The premises are part of the Co-operative society by name "Lawrence & Mayo Commercial Premises Co-operative Society Limited. The respondent No.1 on renewal of the lease deeds in the year 1999, re-assessed the rateable value and the special notice under Section 162(2) and 167 of the Bombay Municipal Corporation Act, 1888 was issued to the Society. The proposed lease deed was to be effected from 1.4.2000. By its communication dated 27.12.2004 the society informed the petitioner bank that the rateable value of the property tax was Rs.6,69,165/- to 11,79,070/- w.e.f. 1.4.2000 and therefore, it called upon the petitioner Bank to pay the Corporation balance of Rs.8,17,123/- alongwith the arrears of property tax at Rs.73,54,107/- w.e.f. 1.4.2000.

4. Being aggrieved by this re-assessment of property tax and as fixed by the respondent, the petitioner Bank approached the Small Cause Court with an appeal under Section 217(2) of the Bombay Municipal Corporations Act, 1888 and as the appeal was filed beyond time, the Bank filed a separate application which came to be registered as Misc. Notice No. 10 of 2005 for condonation of delay. The delay caused was about 419 days. This application has been dismissed by the Additional Chief Judge of the Court of Small Causes at Mumbai vide order dated 15.3.2005 and hence, this petition.

5. The Court below has noted that the first order was passed on 11.12.2003 and letter was addressed on 27.12.2004. In such circumstances the delay from 12.12.2003 and 26.12.2004 was not explained. It further noted that the investigation officer by order dated 11.12.2003 has fixed the rateable value at Rs.24,31,760/- w.e.f. 1.4.2000 to 31.3.2003 and Rs.24,30,680/- w.e.f. 1.4.2003. The Bank contended that these orders were not known to it and in fact it got the knowledge of the same only when it received the letter dated 26.7.2004 from the society. The court below has noted that the notice was served on the owner of the society and the society had filed a complaint against the proposed rateable value. These events would not be sufficient to accept the prayer

for condonation of delay. The memo of appeal filed alongwith the application on 4.2.2005 was not within the limit of 15 days from 27.12.2004 and therefore, on this ground also the delay was not condoned. The delay was not of few days and the delay of 419 days was inordinate delay as per the Small Cause Court.

6. As per the law laid down by this Court in the Case of **H.N. Mirchandani Vs. Bombay Municipal Corporation [1995(1) Mh.L.J. 422],** even the tenant has right to file an appeal against the revision of taxes made by the Corporation and therefore, the petitioner Bank has a right to agitate its grievance by filing an appeal under Section 217 of the Bombay Municipal Corporation Act, 1888. So far as the issue of delay is concerned, the contentions of the petitioner that it got the knowledge of the revision in tax for the first time pursuant to the letter dated 27.12.2004 have to be accepted. The petitioner is a Nationalised Bank and is a custodian of public money. Its appeal cannot be rejected merely on technicalities and prima facie, it appears that it had no knowledge of the process of revision undertaken by the Corporation though the society was aware of it. The letter dated 27.12.2004 could have been received by the Bank before the end of December, 2004 in any case and in normal circumstances there was no difficulty for the petitioner bank to approach

the lower appellate Court to file an appeal within a period of 15 days. The Bank has not furnished its explanation as to why it filed the appeal for the first time on 4.2.2005. Non explanation of this delay of about 20 days would not result in non suiting the Bank on the threshold and such a delay could have been condoned by imposing costs or may be exemplary costs. This is a case where the delay caused in filing the appeal deserves to be condoned and the petitioner Bank ought to have given an opportunity to agitate its challenge to the Revision in property tax on merits but by imposing costs.

7. Hence, this petition is allow ed and the Misc. Notice No. 10 of 2005 in Municipal Appeal No. 130 of 2005 is hereby made absolute but by imposing costs quantified at Rs.5,000/-. This amount shall be remitted by the petitioner Bank to the legal services authority of this Court within a period of two weeks from today.

8. Rule made absolute accordingly.

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